IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6091 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No @@

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

BHEMABHAI @ BHIMATIBHAI CHELABHAI MARWADI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Ms.Siddhi S. Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 19/11/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitutin of India has been filed by the petitioner in the nature of certiorary and Habeas Corpus praying for quashing the detention order dated 24th February 1998 and for immediate release from illegal detention.

2. Brief facts are that on 24th February 1998 the detaining Authority passed an order of detention under Section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short "PASA Act") against the petitioner vide Annexure : A. The grounds of detention were also supplied to the petitioner vide Annexure : B. From the grounds of detention it seems that because of registration of 13 cases against the petitioner under various sections of the Indian Penal Code punishable under Chapter : 16 and 17 of the Indian Penal Code and further because the petitioner in the pretext of running a Pav Bhaji business collected primitive people (Adivasi) from Rajasthan and formed a gang of robbers and dacoits. Theft, robbery, bank dacoity, etc. were committed by the petitioner. When he was detained by the police for investigation in some cases he made confession before the police and on his pointing out looted property and stollen properties were recovered. Police investigation is going on in several cases. Only two cases, out of 13 mentioned in the detention order, are pending in the Court. The detaining Authority found that even order of externment of the petitioner under Sections 56 and 57 of the Bombay Police Act will not be effective remedy inasmuch as even after externment the petitioner will continue his illegal activities.

3. The order of detention (Annexure : A) was challenged before me on four grouns in the course of arguments by the learned Counsel for the petitioner.

4. One of the grounds was that representation sent by the petitioner's Advocate to the State Government on 1st August 1998 has not been considered. Since this ground has not been taken in the writ petition and no material has been supplied on the record of the writ petition to substantiate this argument it cannot be permitted to be raised during argument in this writ petition.

5. Another contention was that the petitioner was in judicial custody since January, 1998 in connection with some of the cases mentioned in the grounds of detention and as such the detention order is illegal. This ground was, in the course of arguments, not pressed by the learned Counsel for the petitioner.

6. Now only two grounds are left for consideration.

7. The first ground is contained in Para : 10 of the writ petition wherein it is stated that Page Nos.21, 23, 25, 27, 29, 141, 143, 145 and 147 are in English language and the petitioner does not know english at all and non-supply of copies of these documents in the language which is known to the petitioner or which is understood by the petitioner has prejudiced his right to make effective representation against his detention and as such there has been infringement of fundamental right guaranteed under Article 22, Clause (5) of the Constitution of India. Counter Affidavit has been filed by the detaining Authority controverting the aforesaid disclosure.

8. Before referring to the counter affidavit of the detaining Authority, who is none-else than the District Magistrate, Palanpur, I am constrained to remark that the detaining Authority has absolutely no idea how the Affidavits are to be sworn. The verification part of the Affidavit recites as under :

> "What is stated above is true to the best of my knowledge and information derived from the official record and I believe the same to be true."

This is not a way in which the affidavits are to be sworn. Each para of the affidavit has to be separately sworn stating clearly the deposition in which para is based on personal knowledge or information or from the record. That has not been done. Consequently the Affidavit is vague and is no affidavit in eye of law. Further, the detaining Authority was in a great hurry in putting his initials only on the Affidavit. He did not bother to mention the date on which he had sworn the Affidavit. Date portion in the Affidavit is blank till now. The affidavit was sworn before the Additional District Magistrate, Palanpur. He too has no idea as to how the affidavits are to be sworn. He also did not care to put the date below his signature. He has put only his remarks like office note "before me", sd/-, Additional District Magistrate, Palanpur. It is therefore not clear

from this note of the Additional District Magistrate that what was done by the District Magistrate before him. Such Affidavit is nothing, but waste paper and no reliance can be placed on it. He was also required to put his initial on each paragraph and page of the Affidavit so that there may not be any possibility or inter-polation or change of other pages. On pages 1 to 4 there is no initial of the Additional District Magistrate. Such careless verification of the Affidavit is a matter of cause and concern especially when it comes from responsible authority like Additional District Magistrate.

The Additional District Magistrate also did not care to look into Para : 9 of the Affidavit. In third line type word "Hindi" was scored and was substituted by hand written word "Gujarati". This alteration of the Affidavit was also not initialled by the Additional District Magistrate.

9. Looking to Para : 5 of the Counter Affidavit on its face value it can be said that the Gujarati translation of the nine documents mentioned above were supplied to the petitioner only on 13.8.1998. The learned A.G.P. now contends that Gujarati translation was supplied to the detenu on 10.3.1998, but for this the Affidavit of the detaining Authority does not support her. On the other hand the Affidavit of the detaining Authority shows that gujarati translation of these documents was supplied to the detenu only on 13.8.1998. This was certainly apparent breach of Section 9(1) of the PASA Act which provides that when a person is detained in persuance of a detention order the authority making the order shall, as soon as may be, but not later than seven days from the date of detention communicate to him the grounds on which the order has been passed and shall afford him earliest opportunity of making representation against the order to the State Government. This legislative mandate is identical to fundamental right guaranteed under Article 22(5) of the Constitution of India. This legislative mandate compels the detaining authority to furnish the detenu the grounds of detention as soon as may be possible, but not later than seven days from the date of detention. For a moment even if the contention of the learned A.G.P. is accepted for which there is no material on record, that Gujarati translation was supplied on 10.3.1998 it was obviously done beyond seven days inasmuch as the detention order was passed on 24.2.1998. If the detaining Authority is correct in his deposition that gujarati translation was supplied to the petitioner on 13.3.1998, in that event also there was

breach of legislative mandate contained in Section 9(1) of the PASA Act.

10. The legislative mandate contained in Section 9(1) is in two parts, the first is communication of ground of detention and the second is affording the detenu earliest opportunity of making representation. Communication of grounds of detention is not a hollow formality. The detaining Authority is required to furnish grounds of detention and also the material upon which inferrence/inferrences were drawn by the detaining Authority on which the grounds of detention were formulated. Such material would include the document which were placed before the detaining Authority upon which he came to subjective satisfaction to order preventive detention of detenu. He is under obligation not only to supply documents or copies of documents in the language in which they were placed before the detaining Authority. On the other hand the detaining authority has to supply copies of documents in the language which is known or understood by the detenu. It was so emphasised by the Apex Court in several cases and one of the cases is Lallubhai Jogibhai v/s. Union of India, reported in AIR 1981 SC 728.

11. Thus, non-supply of Gujarati translation of nine documents mentioned in Para : 10 of the writ petition within the statutory period has certainly taken away valuable right of the petitioner in making effective representation against his detention which has rendered the detention order invalid.

12. The next ground of attack is that the activities of the petitioner do not amount to disturbing public order. No matter several cases had been registered against the petitioner yet the petitioner in the circumstances of the case cannot be said to be dangerous person.

13. A person may by appearance seem to be dangerous person, but this concept of a lay-man is foreign to the definition of dangerous person contained in Section 2(c) of the PASA Act. It provides that dangerous person means a person who either by himself or as member or leader of a gang habitually commits or attempt to commit or abets commission of any offences punishable under Chapter 16 or 17 of the Indian Penal Code or any of the offences punishable under Chapter : 5 of the Arms Act. Technically the petitioner, in view of 13 cases punishable under various sections of the Indian Penal Code, mentioned in the grounds of detention and falling

in the relevant chapter under the I.P.C. can be said to be dangerous person, but on this ground alone he cannot be placed under preventive detention. Unless the activity of a person is such which is prejudicial to the maintenance of public order no order for preventive detention as contemplated under Section 3(2) of the PASA Act can be passed. Section 3, sub-clause (iv) further provides that for the purposes of this section a person shall be deemed to be acting in any manner prejudicial to the maintenance of public order when such person is engaged in or is making preparation for engaging him in any activity..... or dangerous person..... which affect adversely or which likely to affect adversely the maintenance of public order. Thus, unless the activities of the petitioner are prejudicial to the maintenance of public order he cannot be detained simply because he is a dangerous person within the meaning of Section 2(c) of PASA Act.

14. Learned A.G.P. on the basis of the cases mentioned in the grounds of detention contended that since some of these offences were committed in public places like temple, State Bank, Bank of Baroda, the activities of the petitioner were certainly prejudicial to maintenance of public order. She also contended that other criminal activities of the petitioner also affected adversely the maintenance of public order because people in the locality were not feeling safe and secure from the activities of the petitioner. Out of 13 cases mentioned in the grounds of detention, it seems that trial is pending only in two cases and the remaining 11 cases are under police investigation. Brief account of the incident in these cases has been given in the grounds of detention. All the incidents took place in the year 1997. Despite allegation that in most of the cases the petitioner made confession before the Police and recovered some of the stollen property as well as looted properties were recovered from him either in person or on his pointing out, the police has not been able to complete investigation in those cases and submit charge sheet though more than a year has elapsed. It is not necessary in this writ petition to comment what is the value of confession made by the accused during police custody and what will be the fate of these cases. However, commission of theft in various houses cannot be said to be disturb public order. Like wise if bank dacoity was committed it can hardly be said to disturb the public order. There is no wispher in the grounds of detention that the petitioner was seen committing bank dacoicy or bank robbery in three banks mentioned in the grounds of detention or he was apprehended at the spot or

he fired from fire arm creating terror in the locality. In one of the bank robbery only Rs.150/- were looted. In another bank robbery Rs.66/- were only looted. Ofcourse in the third bank robbery the amount runs to the tune of Rs.2,22,802.27 ps. Direct participation of the petitioner in these cases is alleged only on the strength of his confession before the police during policy custody. It was not a case of sensational robbery or bank dacoity in which the public order can be said to have been disturbed. The routine type of narration and allegation of fact has been made in each case against the petitioner.

15. The above instances might have created law and order problem for the police which is manifest from Para : 14 of the grounds of detention which recites that the petitioner from his activities has disturbed the police force also. This indicates volumes that police force being disturbed with the petitioner it sponsored the action of preventive detention against the petitioner. Actually the activities of the petitioner complained of have no relevance to the disturbance or maintenance of public order and as sush the order of detention against the petitioner cannot be sustained.

16. For the reasons stated above the writ petition succeds and is hereby allowed. The impugned order of detention dated 24.2.1998 contained in Annexure : A to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

(D.C.Srivastava,J)

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